

**Southeast Missouri District Council of Carpenters  
and International Riggers, Inc. and Local 36,  
Sheet Metal Workers International Association,  
AFL-CIO. Case 14-CD-839**

February 28, 1992

**DECISION AND DETERMINATION OF  
DISPUTE**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

The charge in this Section 10(k) proceeding was filed October 31, 1990, by International Riggers, Inc. (the Employer), alleging that the Respondent, Southeast Missouri District Council of Carpenters (the Carpenters), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Local 36, Sheet Metal Workers International Association, AFL-CIO (the Sheet Metal Workers or Local 36). The hearing was held November 19 and 28, 1990, before Hearing Officer Caryn L. Fine.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.<sup>1</sup>

**I. JURISDICTION**

The Employer, a Nevada corporation, with its principal office located in Rockford, Illinois, is engaged in the installation and rebuilding of equipment. Since April 1990, when it began its operations, the Employer purchased for use within the State of Illinois materials and equipment valued in excess of \$50,000 from outside the State of Illinois. In addition, the Employer, which has a jobsite in Cape Girardeau, Missouri, the location of the present dispute, purchased for use at the site materials or equipment valued in excess of \$50,000 from outside the State of Missouri. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Carpenters presented evidence that it is affiliated with the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, that employees participate in the organization, and that it exists for the purpose of representing employees and for the purpose of dealing with employers concerning grievances, labor disputes,

wages, rates of pay, hours of employment, and conditions of work. We find that Carpenters is a labor organization within the meaning of Section 2(5) of the Act. Sheet Metal Workers presented no evidence concerning its status as a labor organization.<sup>2</sup>

**II. THE DISPUTE**

*A. Background and Facts of Dispute*

Lone Star Industries operates a cement production facility in Cape Girardeau, Missouri. In July 1990, Lone Star invited a number of contractors to submit bids to serve as general contractor on a project involving substantial renovations to the cement production facility in order to meet emission control standards.

Prior to the submission of its bid, the Employer signed a national maintenance agreement between the United Brotherhood of Carpenters and Joiners of America and the Crane & Rigging Millwright Group Specialized Carriers and Rigging Association. The Employer requested and received permission to use this agreement on the Cape Girardeau project. The Employer was awarded the job and assigned the work to employees represented by Carpenters. Stephen Teeple, owner of the Employer, testified that the work on the project was considered maintenance work pursuant to the national agreement because it involved the replacement of an existing air pollution system.

Shortly after the Employer submitted its bid, Local 36 Business Agent David Zimmerman contacted Teeple. Zimmerman informed Teeple that the Lone Star project involved some sheet metal work. Teeple responded that, with the exception of some electrical, insulating, and concrete work, the remainder of the work had been assigned to employees represented by the Carpenters. By letter dated August 31, 1990, Local 36 reminded Teeple that the Employer was a party to a labor agreement with Local 1 of the Sheet Metal Workers International covering work at the Employer's Oglesby, Illinois jobsite. Local 36 claimed that therefore the Employer was bound to assign the work in question to employees it represented whenever the Employer performed work within the jurisdiction of Local 36. Local 36 indicated that if the Employer failed to comply it would file a grievance.

Teeple thereupon contacted Carpenters Representative John Ray Conklin and informed him that in light of Local 36's intention to file a grievance over the Employer's assignment of the work the Employer might have to change the assignment. Conklin re-

<sup>1</sup> The Employer filed a motion to reopen the record and for leave to submit affidavit relating to new evidence, along with a brief in support of this motion. The Employer also filed a motion for leave to submit a reply brief. The Sheet Metal Workers opposed these motions. In view of our disposition of this case, we find it unnecessary to pass on the Employer's motions.

<sup>2</sup> We note that the status of Sheet Metal Workers as a labor organization "is not a prerequisite to a finding that a jurisdictional dispute exists, as it has been repeatedly held that Secs. 8(b)(4)(D) and 10(k) apply to disputes 'between rival groups of employees,' and not only between rival unions." *Essex County Building Trades Council (Index Construction)*, 243 NLRB 249 fn. 2 (1979) (quoting *Teamsters Local 107 (Safeway Stores)*, 134 NLRB 1320, 1322 (1961)).

sponded that he would do everything he could to get the work back, including picketing the jobsite. Conklin reiterated in his October 30, 1990 letter to Teeple that Carpenters “will take whatever measures are required, including strike activity, to maintain all work presently assigned to its members.”

The Employer did not change its work assignment. On October 19, 1990, Teeple received a copy of the grievance which Local 36 filed with the Local Joint Adjustment Board for the Sheet Metal Industry in which Local 36 claimed that the Employer had misassigned the work in dispute.

### B. Work in Dispute

The notice of hearing describes the work in dispute as follows:

Major modifications in the clinker cooler area including eight new cooler undergrate fans, a new heat exchanger, a new dust collector, a new cooler vent fan, the duct work necessary to connect the above equipment, all supports and foundations, and two new electrical motor rooms at the Employer's Cape Girardeau, Missouri project.

The parties were unable to stipulate that this is an accurate description of the work being claimed by the Carpenters and Sheet Metal Workers.

The record reveals that the Employer has assigned to its employees represented by the Operating Engineers certain portions of the above-described work, including the operation of cranes, air compressors, and gasoline-powered welding machines used to perform work related to the above-described work. In addition, the Employer has entered into contracts with other employers to perform electrical work, insulation work, and pile driving, concrete and foundation work on the project. The Employer has assigned to its employees represented by the Carpenters all project work not being performed by employees represented by Operating Engineers or employed by the various subcontractors. Work assigned to employees represented by the Carpenters includes sheet metal work.

Sheet Metal Workers has avoided making clear what work it is seeking for employees it represents. Our review of the Sheet Metal Workers conversations with the Employer, the letter to the Employer in which it threatened to file a grievance, and the grievance itself indicates that the Sheet Metal Workers appears to claim only the sheet metal work involved on the project which has been assigned to employees represented by the Carpenters.

Based on the above, we find that the work in dispute is the *sheet metal work* involved in making the modifications in the clinker cooler cooler area including eight new cooler undergrate fans, a new heat exchanger, a new dust collector, a new cooler vent fan, the duct work necessary to connect the above equip-

ment, all supports and foundations, and two new electrical motor rooms at the Employer's Cape Girardeau, Missouri project.

### C. Contentions of the Parties

The Employer asserts that there is reasonable cause to believe that Carpenters violated Section 8(b)(4)(D) of the Act when it threatened to picket the Cape Girardeau jobsite if the Employer reassigned the work in dispute to Sheet Metal Workers. The Employer contends that the disputed work should be awarded to Carpenters-represented employees based on its collective-bargaining agreement with Carpenters, employer preference, past practice, relative skills, and economy and efficiency of operation. Carpenters agrees with the Employer's contentions.

Sheet Metal Workers argues that this is not a jurisdictional dispute because there are not two competing claims for the work. Sheet Metal Workers contends its grievance against the Employer—filed to obtain wages and fringe benefit contributions as damages because of the Employer's breach of its agreement with Sheet Metal Workers Local 1—is not a claim for the work. Sheet Metal Workers also claims that there might exist a mechanism, to which all parties are bound, for the voluntary resolution of this dispute.

### D. Applicability of the Statute

In a Section 10(k) proceeding, the Board must determine whether there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. In the instant case, this requires a finding that there is reasonable cause to believe that a party has used proscribed means to enforce its claim and that there are competing claims to disputed work between rival groups of employees.

As noted above, in response to the Employer's suggestion that it might have to reassign the disputed work because of the Sheet Metal Workers' grievance, Carpenters threatened to take whatever action was necessary in order to keep the work, including picketing. Carpenters subsequently repeated this threat in a letter to the Employer.<sup>3</sup> Accordingly, if there are competing claims to disputed work between rival employee groups, there is reasonable cause to believe that a violation of Section 8(b)(4)(D) had occurred.

Sheet Metal Workers contends there are not competing claims because its grievance against the Employer does not constitute a claim for the work. We reject this contention. Relying on its contract with the Employer,

<sup>3</sup>Local 36 claims that the threat is a sham, orchestrated by the Employer and the Carpenters as a defense to Local 36's grievance. We disagree. The record contains insufficient evidence from which to conclude that the threat was not made seriously or that the Carpenters in any way colluded with the Employer. See generally *Teamsters Local 6 (Anheuser-Busch)*, 270 NLRB 219 (1984).

the Carpenters claims the disputed work for the employees it represents. By filing its grievance for violation of a collective-bargaining agreement between the Employer and Sheet Metal Workers Local 1, which Sheet Metal Workers contends applies to the Employer's Cape Girardeau jobsite, Sheet Metal Workers was, in effect, making a demand for the work. This case presents a traditional 10(k) situation in which two unions have contracts with the Employer and each union claims its contract covers the same work. *Laborers Local 931 (Carl Bolander & Sons)*, 305 NLRB 490 (1991). We conclude that there are competing claims to disputed work between rival groups of employees.<sup>4</sup>

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred<sup>5</sup> and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act.<sup>6</sup> Accordingly, we find that the dispute is properly before the Board for determination.

#### E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

##### 1. Collective-bargaining agreements and certifications

No party claims there are Board certifications applicable to the work in dispute.

The Employer is signatory to an agreement between the United Brotherhood of Carpenters and Joiners of America, AFL-CIO<sup>7</sup> and the Association of Millwright Contractors, Crane & Rigging Millwright Group Specialized Carriers and Rigging Association covering the

performance of repair, replacement, maintenance, and renovation work. This agreement governs, inter alia, the wages and fringe benefits negotiated by the local United Brotherhood of Carpenters-affiliated union within whose territorial jurisdiction the work covered by the national agreement is to be performed. The Employer is also signatory to a "Commercial & Industrial Contract" between the Southeast Missouri Contractors Association and Carpenters Locals 1770 and 2030 of the Southeast Missouri District Council of Carpenters. This contract is in effect on all jobs within the District Council's territorial jurisdiction, including Lone Star Industries' Cape Girardeau project.

The Employer does not have a contract with Local 36 covering work at this jobsite. As noted previously, the Employer has a contract with Sheet Metal Workers Local 1 covering the Employer's work at Lone Star Industries' Oglesby, Illinois location. Local 36 asserts that this contract covers the work in dispute at the Employer's Cape Girardeau jobsite. Because this factor would not, in any event, alter our determination, we find it unnecessary to determine whether Sheet Metal Workers Local 1's contract with the Employer applies to the work in dispute.

##### 2. Employer preference

The Employer prefers that employees represented by Carpenters continue to perform the work in dispute. Accordingly, we find this factor favors an award of the disputed work to employees represented by Carpenters.<sup>8</sup>

##### 3. Past practice

Employees represented by the Carpenters have performed virtually all maintenance and renovation work at the Cape Girardeau facility since it opened. Local 36 claims sheet metal workers have performed similar work at the Employer's Oglesby, Illinois facility. Because the record is ambiguous, we find this factor does not favor an award of the disputed work to employees represented by either union.

##### 4. Area practice

Carpenters and Local 36 claim that employees represented by them perform similar maintenance and renovation work for other plants in the Cape Girardeau area. We find this factor does not favor an award of

<sup>4</sup>Chairman Stephens, who dissented in *Laborers Local 731 (Slattery Associates)*, 298 NLRB 787 (1990), finds that the present case is distinguishable from *Slattery*.

<sup>5</sup>It is well settled that there is reasonable cause to believe that a violation of Sec. 8(b)(4)(D) has occurred if a labor organization that represents employees who are assigned the disputed work threatens to picket or otherwise coerces an employer to continue such an assignment. *Sheet Metal Workers Local 107 (Lathrop Co.)*, 276 NLRB 1200, 1202 (1985).

<sup>6</sup>Although the Employer and Carpenters proposed to stipulate at the hearing that there is no such means, Sheet Metal Workers claims that the parties to this dispute may be parties to a mechanism for its voluntary adjustment. This bare assertion is unsupported by the record.

<sup>7</sup>The Carpenters is affiliated with this International Union. The agreement is a nationwide contract.

<sup>8</sup>Local 36 argues that the Board should not rely on employer preference to assign the work because the Employer's preference was dictated by Lone Star Industries, who wished the assignment to be made to the Carpenters in order to settle litigation unrelated to this proceeding. Local 36 objects to the hearing officer's quashing a subpoena for documents from Lone Star pertaining to that litigation.

Local 36's argument is without merit. The record shows, and Local 36 does not directly claim otherwise, that the Employer's own preference is to assign the work to employees represented by the Carpenters.

the disputed work to employees represented by either union.

#### 5. Relative skills

The record shows that the employees represented by Carpenters possess the skills required to perform the disputed work. There is evidence that sheet metal workers perform similar work. We are unable to rely on this factor to award the disputed work to either group of employees.

#### 6. Economy and efficiency of operation

Teeple testified that he selected Carpenters-represented employees to perform the disputed work. Carpenters-represented employees also perform other project work related to the Employer's completion of its contract with Lone Star Industries. The Sheet Metal Workers claim only a portion of the work carpenters perform for the Employer. If the Employer used employees represented by the Sheet Metal Workers to perform only the disputed work, the Employer would still need Carpenters-represented employees to perform the project work which the Sheet Metal Workers do not claim.

We find that it is more efficient to award the disputed work to Carpenters-represented employees.

#### Conclusions

After considering all the relevant factors, we conclude that employees represented by Carpenters are entitled to perform the work in the dispute. We reach this conclusion relying on the factors of employer preference and economy and efficiency of operation. In making this determination, we are awarding the work to employees represented by Carpenters, not to that Union or its members. This determination is limited to the controversy that gave rise to this proceeding.

#### DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of International Riggers, Inc., represented by Southeast Missouri District Council of Carpenters, are entitled to perform the sheet metal work involved in making the modifications in the clinker cooler cooler area including eight new cooler undergrate fans, a new heat exchanger, a new dust collector, a new cooler vent fan, the duct work necessary to connect the above equipment, all supports and foundations, and two new electrical motor rooms at International Riggers' Cape Girardeau, Missouri project.